

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

HONORABLE PAUL D. BORMAN

V.

No. 14-20779

No. 15-20311

ARIA OMAR SABIT,

Defendant.

/

EXCERPTS OF PLEA HEARING

Friday, May 22, 2015

4:10 p.m.

APPEARANCES:

For the Plaintiff:

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(Appearances continued)

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1 APPEARANCES (Continued) :

2 For the Defendant:

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	TABLE OF CONTENTS	
1		
2		<u>Page</u>
3	Plea hearing	4
4	California indictment	11
5	Michigan indictment	22
6		
7		
8		
9	<u>Exhibits:</u>	<u>Received</u>
10	(None offered.)	
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 May 22, 2015

2 Detroit, Michigan

3 || — — —

4 (Call to order of the Court, 4:10 p.m.)
5 (Court, Counsel and Defendant present.)

6 THE COURT CLERK: Now calling the case of *United
7 States of America versus Aria Omar Sabit, M.D.*, Case Numbers
8 14-20779 and 15-20311.

9 THE COURT: Okay. Parties please identify themselves
10 for the record beginning with the government.

11 MS. MCCULLOUGH: Good afternoon, Your Honor. May it
12 please the Court, Regina McCullough appearing on behalf of the
13 United States.

14 MR. ROSS: Philip Ross, forfeiture counsel, appearing
15 on behalf of the United States.

16 MR. BAUM: Jonathan Baum appearing on behalf of the
17 United States.

18 THE COURT: Okay.

19 MR. LESSING: Good afternoon.

20 THE COURT: Very good. Good afternoon, sir.

21 MR. LESSING: Good afternoon, Your Honor. Timothy
22 Lessing appearing on behalf of Mr. Aria Sabit who is to my
23 right.

24 THE COURT: Good afternoon, Dr. Sabit.

25 MR. NISKAR: May it please the Court, Joseph Niskar on

PLEA HEARING

5

1 behalf of Dr. Sabit.

2 THE COURT: Very good. Have a seat for a minute. Let
3 me just put things together here.

4 Should we take the forfeiture bill of particulars
5 first? That would seem to be getting that out of the way.

6 MR. NISKAR: No objection to that.

7 THE COURT: Okay. Then why don't you and your client
8 come to the podium and we'll proceed.

9 Why don't you proceed, Mr. Ross, and then we'll go
10 over it with Dr. Sabit and his attorneys.

11 MR. ROSS: Thank you, Your Honor.

12 As part of the Rule 11 plea agreement, the Defendant
13 has agreed to forfeit proceeds from the private sale of the
14 home at 3645 Lahser Road in Bloomfield Hills. That property
15 description is included on page 25 of the Rule 11 plea
16 agreement.

17 Also on page 25 of the Rule 11 plea agreement, the
18 Defendant has entered into an agreement to forfeit funds from
19 four separate bank accounts that are listed, three at Comerica
20 and one at PNC.

21 Also, with respect to the forfeiture, the Defendant
22 has waived any challenge he may have that the forfeiture
23 constitutes an excessive fine under the Eighth Amendment. He
24 also agrees to enter a number of documents related to the
25 forfeiture at or before sentencing, and he understands that

PLEA HEARING

6

1 forfeiture is part of the sentence and that he waives his right
2 to have that included in the judgment or orally pronounced at
3 the time of sentencing.

4 THE COURT: Okay. Counsel, which one of you will be
5 representing Dr. Sabit on this forfeiture matter?

6 MR. LESSING: Mr. Niskar will, Your Honor.

7 MR. NISKAR: I will, Your Honor.

8 THE COURT: Okay. Mr. Niskar, have you gone over this
9 forfeiture bill of particulars with Dr. Sabit?

10 MR. NISKAR: I have.

11 THE COURT: Okay. Dr. Sabit, have you gone over the
12 forfeiture bill of particulars with Mr. Niskar?

13 THE DEFENDANT: I have.

14 THE COURT: And you understand that you're going to
15 forfeit the home on Lahser Road in Bloomfield Hills. Is that
16 correct, sir?

17 MR. NISKAR: He's forfeiting his interest in the
18 proceeds.

19 THE COURT: Okay. Your interest in the proceeds of
20 the home?

21 MR. NISKAR: That's right.

22 THE COURT: The home will be sold; is that what you're
23 saying?

24 MR. NISKAR: Yes.

25 THE COURT: And you're also forfeiting your interest

PLEA HEARING

7

1 in the four bank accounts, three at Comerica and a fourth at
2 PNC. Is that correct, Doctor?

3 THE DEFENDANT: It is.

4 THE COURT: Okay. Mr. Ross, are there any questions
5 that you want to further ask to establish a factual basis
6 additionally with regard to the forfeiture?

7 MR. ROSS: No, Your Honor.

8 THE COURT: Okay. Then I will -- if you'll present an
9 order, then I will sign that. It is on the record.

10 MR. ROSS: Thank you, Your Honor.

11 THE COURT: Okay. Then let us proceed to the other
12 matter. My understanding, Mr. Niskar and Mr. Lessing, is that
13 your client wishes to enter pleas as to two separate
14 prosecutions, one here and the other from the Central District
15 of California. Is that correct?

16 MR. NISKAR: That is correct.

17 MR. LESSING: That's correct, Your Honor.

18 THE COURT: Okay. Ms. Tofil, if you'd please swear in
19 Dr. Sabit, we'll proceed.

20 THE COURT CLERK: Raise your right hand.

21 (**Dr. Aria Sabit**, sworn, 4:14 p.m.)

22 THE COURT: Okay. Dr. Sabit, I'm going to question
23 you regarding the facts of the crimes charged. It's important
24 that you tell the truth. You understand that, sir?

25 THE DEFENDANT: I do.

PLEA HEARING

8

1 THE COURT: Okay. Any false answers can be used
2 against you in a separate prosecution for perjury, so it's
3 important to tell the truth. You understand?

4 THE DEFENDANT: I do.

5 THE COURT: Okay. What is your full name?

6 THE DEFENDANT: Aria Omar Sabit.

7 THE COURT: Okay. You understand that you have a
8 constitutional right to remain silent and not incriminate
9 yourself?

10 THE DEFENDANT: I do.

11 THE COURT: And you want to give that up and plead
12 guilty today; is that correct, sir?

13 THE DEFENDANT: Yes.

14 THE COURT: First I'm going to ask some background
15 questions to assure that you're competent to enter a plea at
16 this time. How old are you, sir?

17 THE DEFENDANT: 39.

18 THE COURT: And how far did you go in school?

19 THE DEFENDANT: Medical school.

20 THE COURT: Okay. Do you read, write and understand
21 the English language?

22 THE DEFENDANT: I do.

23 THE COURT: Are you now under the influence of any
24 medication, drugs or alcohol?

25 THE DEFENDANT: I'm not.

PLEA HEARING

9

1 THE COURT: I find that Dr. Sabit is capable of
2 entering a knowing plea. Do you agree, Mr. Niskar?

3 MR. NISKAR: I agree.

4 THE COURT: Do you agree, Miss McCullough?

5 MS. MCCULLOUGH: Yes, Your Honor.

6 THE COURT: You have your attorneys beside you in
7 court today. Have you discussed this matter with them?

8 THE DEFENDANT: Yes.

9 THE COURT: Are you satisfied with their advice and
10 service?

11 THE DEFENDANT: I am.

12 THE COURT: Do you understand that if your guilty plea
13 is accepted, you give up valuable civil rights, such as the
14 right to vote, hold office, serve on a jury, possess or be
15 around firearms. You understand that?

16 THE DEFENDANT: I do.

17 THE COURT: Okay. If I accept your plea of guilty,
18 you give up many important constitutional rights, and I'll go
19 over some of the most important to make sure you understand
20 what you're giving up.

21 You understand, sir, that you have the right to plead
22 not guilty and to have a trial before the Court or a jury of 12
23 citizens?

24 THE DEFENDANT: I do.

25 THE COURT: You understand at trial you'd be presumed

PLEA HEARING

10

1 innocent and the government would have to prove you guilty
2 beyond a reasonable doubt. You understand that, sir?

3 THE DEFENDANT: Yes.

4 THE COURT: Also at trial, you could question
5 witnesses against you through your attorneys and have the Court
6 order any witnesses you want for your defense to appear at
7 trial. You understand that, sir?

8 THE DEFENDANT: I do.

9 THE COURT: Also at trial you could remain silent
10 during the trial, not have your silence used against you or
11 testify if you want to testify. You understand that?

12 THE DEFENDANT: I do.

13 THE COURT: Understanding these rights, do you want to
14 give them up and plead guilty today?

15 THE DEFENDANT: I do.

16 THE COURT: Okay. Have you received copies of the
17 indictments, the charges against you, in this case?

18 THE DEFENDANT: Yes, I have.

19 THE COURT: There's one from California and one from
20 Southern Division of Michigan. And I presume that the doctor
21 has been arraigned on both indictments?

22 MR. NISKAR: He was this afternoon.

23 MS. MCCULLOUGH: Your Honor --

24 MR. NISKAR: I'm sorry.

25 MS. MCCULLOUGH: Just for the record, they are

PLEA HEARING

11

1 informations, Your Honor, and he was arraigned this afternoon
2 on both informations and did execute a waiver of indictment.

3 THE COURT: Okay. So we have an information from
4 California that's CR-0258. That's the California number. And
5 the number here is 15-20311. Is that correct?

6 MS. MCCULLOUGH: That's correct, Your Honor.

7 MR. LESSING: That's correct.

8 THE COURT: And the Michigan one is 14-20779. Is that
9 correct?

10 MS. MCCULLOUGH: That is correct, Your Honor.

11 THE COURT: Okay. Then, first, with regard to the
12 Rule 11, let me just look at it. The counts of conviction in
13 the Michigan case will be Counts 1, 2, 3, 4 and 5 of the first
14 superseding information. Is that correct, Miss McCullough?

15 MS. MCCULLOUGH: That's correct.

16 THE COURT: Is that correct, Mr. Niskar?

17 MR. NISKAR: That is correct.

18 THE COURT: And the California information, the plea
19 would be to Count 1 of the information; is that correct?

20 MS. MCCULLOUGH: That is correct, Your Honor. And
21 with respect to the California case, Jon Baum will be handling
22 that aspect of the case, Your Honor.

23 THE COURT: Okay. Very good.

24 Then in terms of explaining the charges against the
25 Defendant, why don't we start with Mr. Baum going over the

PLEA HEARING

1 charge to which the Defendant is going to plead guilty in the
2 California case, and then Miss McCullough will go over the
3 charges to which the Defendant is going to plead in the
4 Michigan case, so.

5 MR. BAUM: Your Honor, the Defendant has been charged
6 in Count 1 of the criminal information in Case Number 15-20311
7 with one count of conspiracy to commit health care fraud in
8 violation of Title 18 United States Code Section 1349.

9 THE COURT: Okay. A little bit louder would help and
10 a little slower would help Ms. Lizza too. Thank you.

11 MR. BAUM: The statutory -- the statutory maximum
12 penalty for Count 1 is 20 years imprisonment, a fine of
13 \$250,000 or twice the pecuniary gain, or loss, pursuant to
14 Title 18 United States Code Section 3571 and a three-year term
15 of supervised release.

16 THE COURT: Okay. You understand, Doctor, those are
17 the charges against you on the California case?

18 THE DEFENDANT: I do.

19 THE COURT: Can you also explain what the conduct is
20 in that count that you're alleging Dr. Sabit committed, in
21 terms of it can be a summary because I would presume that he's
22 gone over the matter completely with his attorneys. Is that
23 correct, Mr. Niskar?

24 MR. NISKAR: That's correct.

25 THE COURT: Mr. Lessing?

PLEA HEARING

13

1 MR. LESSING: Yes.

2 THE COURT: Okay.

3 MR. BAUM: I will provide the Court with a summary,
4 Your Honor.

5 THE COURT: Okay.

6 MR. BAUM: Prior to moving to Michigan, Dr. Sabit was
7 a resident of Ventura, California, within the Central District
8 of California.

9 THE COURT: That's V-E-N-T-U-R-A.

10 MR. BAUM: Yes, Your Honor.

11 Dr. Sabit was also a licensed neurosurgeon in
12 California. In approximately February, 2010, Dr. Sabit became
13 involved with Apex, A-P-E-X, Medical Technologies, LLC while he
14 was on the staff of a California hospital.

15 Apex was owned by another neurosurgeon and three
16 nonphysicians who operated Apex as a physician-owned
17 distributorship and paid neurosurgeons lucrative illegal
18 kickbacks tied directly to the volume and complexity of the
19 surgeries that the surgeons performed and the number of Apex
20 spinal implant devices that the surgeons used in their spine
21 surgeries.

22 In exchange for an opportunity to invest in Apex and
23 share in its profits, Dr. Sabit agreed to convince his hospital
24 to buy spinal implant devices from Apex and use a sufficient
25 number of Apex spinal implant devices in his spine surgeries.

PLEA HEARING

14

1 Dr. Sabit and Apex's co-owners used Apex to operate an illegal
2 kickback scheme. In doing so, they, among other things,
3 concealed Dr. Sabit's involvement in Apex from outsiders.
4 Dr. Sabit then required the hospital and surgical centers where
5 he and his fellow neurosurgeons performed surgeries to purchase
6 spinal implant devices from Apex.

7 Dr. Sabit's involvement in Apex and the financial
8 incentives provided to him by Apex and his co-conspirators at
9 times caused him to compromise his medical judgment and cause
10 serious bodily injury to his patients by performing medically
11 unnecessary spine surgeries on some of his patients in whom he
12 implanted Apex spinal implant devices. On a few occasions, the
13 money that Dr. Sabit made from using Apex spinal implant
14 devices motivated him either to refer patients in for spine
15 surgery who did not need surgery or refer his patients for more
16 complex surgeries, such as multilevel spine fusions, which the
17 patients did not need.

18 The financial incentives provided to Dr. Sabit by Apex
19 and his co-conspirators at times caused him to overinstrument
20 his patients or use more spinal implant devices than were
21 medically necessary to treat his patients in order to generate
22 more sales revenue for Apex which also resulted in serious
23 bodily injury to his patients.

24 All of the surgeries that Dr. Sabit performed using
25 Apex spinal implant devices were predicated on illegal

PLEA HEARING

15

1 kickbacks and false statements which made all those claims
2 false and fraudulent.

3 THE COURT: Okay. Doctor, you understand what the
4 charge is against you?

5 THE DEFENDANT: I do.

6 THE COURT: Okay. Is your willingness to plead guilty
7 with regard to this charge, we'll take this one first, under
8 the Rule 11 plea agreement -- have you been coerced to plead
9 guilty?

10 THE DEFENDANT: I have not.

11 THE COURT: You understand the maximum period of
12 incarceration under the statute and also the maximum fine
13 possibility. You understand that?

14 THE DEFENDANT: I do, Your Honor.

15 THE COURT: Okay. And then, also, there would be a
16 period of supervised release following any incarceration. You
17 understand that?

18 THE DEFENDANT: I do.

19 THE COURT: And, Mr. Baum, did we talk about the
20 period of supervised release?

21 MR. BAUM: I believe I mentioned that the period of
22 supervised release for this offense was three years, Your
23 Honor.

24 THE COURT: Okay. So you understand after any
25 incarceration, you're out on supervised release and at that

PLEA HEARING

16

1 point if you violate that, you could be brought back and sent
2 to jail for up to another three years. You understand that?

3 THE DEFENDANT: I do, Your Honor.

4 THE COURT: Okay. So you are pleading guilty pursuant
5 to a Rule 11 plea agreement that came about after discussions
6 between you, your attorneys and the attorneys for the
7 government; is that correct?

8 THE DEFENDANT: That is.

9 THE COURT: Okay. Let me just look at the documents.

10 Under the total Rule 11 plea agreement, the guideline
11 range -- counsel for the government can help me, as well as
12 counsel for Defendant -- guidelines are but one factor among
13 many the Court takes into account at the time of sentencing,
14 but the guideline range is 108 to 135 months. Is that correct?

15 MS. MCCULLOUGH: Yes, Your Honor.

16 MR. NISKAR: Yes, Your Honor.

17 MR. LESSING: Yes, Your Honor.

18 THE COURT: There's also going to be a special
19 assessment on all the counts, we can take that at one time, and
20 that's \$600, a hundred dollars for each count. Understand
21 that, Doctor?

22 THE DEFENDANT: I do.

23 THE COURT: And there's also a provision with regard
24 to restitution to identifiable victims of your offense. You
25 understand that, sir?

PLEA HEARING

17

1 THE DEFENDANT: I do, Your Honor.

2 THE COURT: There's also an exclusion from the
3 Medicare program, other federal health care programs if you
4 plead guilty under this Rule 11. Do you understand that,
5 Doctor?

6 THE DEFENDANT: I do, Your Honor.

7 THE COURT: And if the Court accepts the Rule 11, then
8 the government will dismiss all remaining charges in this case.
9 Do you understand that?

10 THE DEFENDANT: I do.

11 THE COURT: And that's correct?

12 MS. MCCULLOUGH: Yes, Your Honor.

13 THE COURT: In entering this agreement, this does not
14 compromise, which means prevent, the government from seeking
15 any civil liability or administrative remedies against you.
16 You understand that?

17 THE DEFENDANT: I do.

18 THE COURT: If I sentence you within the guideline
19 range set forth before, then you waive any right to appeal the
20 conviction or sentence. You understand that?

21 THE DEFENDANT: I do.

22 THE COURT: Except if there is the claim of
23 ineffective assistance of counsel, then that is not waived on a
24 basis for appeal. You understand that?

25 THE DEFENDANT: I do.

PLEA HEARING

18

1 THE COURT: And that's correct, Mr. Baum and
2 Miss MacIntyre (sic), based on Attorney General Holder's
3 statement, correct?

4 MS. MCCULLOUGH: Correct, Your Honor.

5 MR. BAUM: Yes, Your Honor.

6 THE COURT: And you understand the guidelines are but
7 one of multiple factors the Court takes into account at the
8 time of the sentencing under the statute. You understand that,
9 sir?

10 THE DEFENDANT: I do, Your Honor.

11 THE COURT: Does the counsel for Defendant wish to
12 place any further 11, Rule 11 provisions, on the record with
13 regard to the California indictment?

14 MR. NISKAR: May I just have one second?

15 THE COURT: Sure.

16 (Short pause.)

17 MR. NISKAR: Nothing further as to the California
18 information.

19 THE COURT: Okay. With regard to -- we already went
20 over what's covered in the Rule 11 plea agreement. Apart from
21 that, have I made you any promises of any sentence?

22 THE DEFENDANT: You have not.

23 THE COURT: Are there any side deals where your
24 attorneys or the government attorney said, "Forget about what
25 you say on the record but something else is going to happen"?

PLEA HEARING

19

1 You haven't got anywhere people promised you things other than
2 what is placed on the record here?

3 MR. NISKAR: Your Honor, may we approach?

4 THE COURT: Sure.

5 (Whereupon a sealed bench conference was held.)

6 THE COURT: Let me ask you again, did anyone threaten
7 or coerce you to plead guilty?

8 THE DEFENDANT: They did not.

9 THE COURT: Are you pleading guilty freely or
10 voluntarily because you believe you are guilty?

11 THE DEFENDANT: I am, Your Honor.

12 THE COURT: Right now are you under probation, parole
13 or inmate status for any other offenses besides what's charged
14 here?

15 THE DEFENDANT: I'm not, Your Honor.

16 THE COURT: Okay. Please tell me what it is that you
17 did during the period in California that leads you to believe
18 you're guilty of the offense of conspiring to commit health
19 care fraud.

20 THE DEFENDANT: I conspired with one other
21 neurosurgeon and three other people to perform surgeries that
22 were sometimes overinstrumented using a Apex brand of screws
23 which resulted in illegal kickback scheme.

24 THE COURT: Okay. Mr. Baum, do you want to ask
25 further questions to further establish a factual basis?

PLEA HEARING

20

1 MR. BAUM: Yes.

2 THE COURT: Oh, first, what location, what city or
3 state, did this take part?

4 THE DEFENDANT: This was in Ventura, California.

5 THE COURT: That's the Central District of California.

6 And what period of time are we talking about?

7 THE DEFENDANT: From 2010.

8 THE COURT: Okay.

9 Proceed, Mr. Baum.

10 MR. BAUM: Dr. Sabit, were you part of Apex Medical
11 Technologies between approximately February, 2010, through
12 August of 2012?

13 THE DEFENDANT: I was.

14 MR. BAUM: And between approximately February of 2010
15 and March of 2011 were you in the Central District of
16 California?

17 THE DEFENDANT: I was.

18 MR. BAUM: In approximately March of 2011 through
19 approximately August of 2012 were you in the Eastern District
20 of Michigan?

21 THE DEFENDANT: I was.

22 MR. BAUM: During that time period did you perform
23 surgeries both in the Central District of California and the
24 Eastern District of Michigan on patients using Apex spinal
25 implant devices?

PLEA HEARING

21

1 THE DEFENDANT: I did.

2 MR. BAUM: Was your use of Apex spinal implant devices
3 in every surgery that you performed using those devices
4 predicated on illegal kickbacks?

5 THE DEFENDANT: Yes.

6 MR. BAUM: Were they also predicated on false
7 statements that were made to the Medicare program that you were
8 going to be compliant with all Medicare rules and regulations
9 including compliance with the Antikickback Statute?

10 THE DEFENDANT: Yes.

11 MR. BAUM: During your -- did your involvement in Apex
12 Medical Sup -- or Technologies incentivize you to perform
13 medically unnecessary surgeries at times on your patients?

14 THE DEFENDANT: Yes.

15 MR. BAUM: Did your involvement in Apex Medical
16 Technologies at times incentivize you to overinstrument your
17 patients?

18 THE DEFENDANT: Yes.

19 MR. BAUM: Did your -- and as a result of you
20 performing medically unnecessary surgeries on your patients and
21 using more -- or overinstrumenting your patients, did you at
22 times cause serious bodily injury to your patients?

23 THE DEFENDANT: I did.

24 MR. BAUM: No further questions, Your Honor.

25 THE COURT: Okay. Does defense counsel wish to ask

PLEA HEARING

22

1 further questions to establish a factual basis?

2 MR. NISKAR: No. We're satisfied.

3 MR. LESSING: We're satisfied, Your Honor.

4 THE COURT: Okay. Thank you.

5 How do you plead, sir?

6 THE DEFENDANT: I plead guilty, Your Honor.

7 THE COURT: The Court finds the Defendant's plea as to
8 the California indictment is knowingly, freely and voluntarily
9 made. The elements of the offense to which he pleads guilty
10 have been made out by his statements in court. The Court will
11 accept the plea, take the Rule 11 under advisement.

12 And now let's proceed to the Michigan indictment.

13 That charges basically -- tell us, Miss --

14 MS. MCCULLOUGH: Yes, Your Honor.

15 THE COURT: Thank you.

16 MS. MCCULLOUGH: That charges -- Counts 1 through 4 of
17 the first superseding information charges the Defendant with
18 the violation of 18 U.S.C. Section 1347 which is substantive
19 counts of health care fraud. Count 5 charges the Defendant
20 with unlawful distribution of a controlled substance in
21 violation of 21 U.S.C. Section 841(a)(1).

22 Your Honor, the penalties for Counts 1 through 4 are
23 up to 20 years imprisonment, a \$250,000 fine and at least two
24 years of supervised release. The penalties with respect to
25 Count 5 are a million dollar fine and a lifetime term of

PLEA HEARING

23

1 supervised release. The parties have negotiated --

2 THE COURT: There is no incarceration period connected
3 to Count 5?

4 MS. MCCULLOUGH: Yes, Your Honor. I apologize. Up to
5 20 years as well.

6 THE COURT: Okay. Okay.

7 MS. MCCULLOUGH: And the parties have negotiated, Your
8 Honor, a lifetime term of supervised release to be imposed with
9 respect to Count 5.

10 With respect to particular supervised release term,
11 the Defendant has agreed to be restricted from any employment
12 in any capacity in the medical profession. That restriction
13 will cover the practice of medicine, owning and operating a
14 medical clinic, conducting any medical research, consulting as
15 an expert, manufacturing or participating in the manufacturing
16 of any medical devices, membership in any physician-owned
17 distributorship and any employment in any capacity in any
18 medical facility. And those are the penalties, Your Honor,
19 with respect to Counts 1 through 4 and Count 5.

20 Would the Court like me to summarize the charges?

21 THE COURT: Please.

22 MS. MCCULLOUGH: Your Honor, Defendant, as I've
23 already stated, is pleading guilty to the first superseding
24 indictment, and it charges the Defendant with four counts of
25 health care fraud.

PLEA HEARING

24

1 THE COURT: Information.

2 MS. MCCULLOUGH: Information, yes.

3 THE COURT: Okay. Thanks.

4 MS. MCCULLOUGH: Thank you, Your Honor.

5 With respect to that information, the Defendant
6 engaged in a scheme and artifice to defraud Medicare, Medicaid
7 and private insurance companies by convincing his patients to
8 undergo spinal fusion surgeries with instrumentation which he
9 never rendered then billing private and public health care
10 benefit programs for these fraudulent services.

11 As part of the scheme, Your Honor, Dr. Sabit would
12 operate on patients and dictate that he had performed a spinal
13 fusion surgery with instrumentation which was never rendered.
14 This invasive surgery would cause serious bodily injury to some
15 of his patients. Sabit's operative reports and treatment
16 records contained false statements about the procedure
17 performed and the instrumentation used in the procedure.

18 Your Honor, on occasion Dr. Sabit dictated that he
19 placed screws which, in fact, he did not place. Counts 1
20 through 4 specifically outline four patients that underwent
21 these procedures. Would the Court like me to go through each
22 specific count?

23 THE COURT: Well, let me just ask. Mr. Niskar,
24 Mr. Lessing, did you go over the particular names of the -- or
25 the initials of the patients and where it was performed and

PLEA HEARING

25

1 what specifically was violated under the law in terms of the
2 instrumentation and lack of instrumentation?

3 MR. LESSING: We did, Your Honor. We went through it
4 with Dr. Sabit in detail.

5 THE COURT: Okay, then. Is that correct, Doctor, you
6 have gone over that with them?

7 THE DEFENDANT: It is, Your Honor.

8 THE COURT: Then I don't think we need for you to go
9 over that now. We'll just deal as we get to each count --

10 MS. MCCULLOUGH: Thank you, Your Honor.

11 THE COURT: -- as to what he did.

12 MS. MCCULLOUGH: And as to Count 5, Your Honor?

13 THE COURT: Yes.

14 MS. MCCULLOUGH: The information charges Defendant on
15 October 22nd of 2012, Dr. Sabit did knowingly, intentionally
16 and unlawfully distributed Schedule II prescription drug
17 controlled substance, specifically Roxicodone, oxycodone, HCl,
18 30 milligrams. Dr. Sabit committed offense by writing a
19 prescription for a Schedule II controlled substance for no
20 legitimate medical purpose and then he transferred the
21 prescription to Patient 5 to be filled.

22 THE COURT: Okay. And you explained that to your
23 client as well, Mr. Lessing and Mr. Niskar?

24 MR. LESSING: Yes, Your Honor.

25 MR. NISKAR: Yes, Your Honor.

PLEA HEARING

26

1 THE COURT: Is that correct, Doctor?

2 THE DEFENDANT: That is correct.

3 THE COURT: Then let's proceed to the various counts.

4 The same Rule 11 applies with regard to the guideline,
5 sentencing guidelines.

6 MS. MCCULLOUGH: They do, Your Honor, and if I may
7 just go over paragraph 7 of that Rule 11 plea agreement.

8 THE COURT: Sure.

9 MS. MCCULLOUGH: The Court noted that there -- the
10 government could pursue civil liability. The bottom portion of
11 paragraph 7 of the Rule 11 pertains to civil liability for two
12 cases pending out of California. And, Your Honor, with respect
13 to those two cases only, the parties have agreed there will not
14 be a restitution order entered with respect to those civil
15 cases.

16 THE COURT: Okay. And is that correct, Mr. Niskar,
17 Mr. Lessing? Sure.

18 MR. LESSING: Just one moment, Your Honor.

19 THE COURT: Okay.

20 MR. NISKAR: May we have one second?

21 THE COURT: Sure.

22 (Short pause.)

23 MS. MCCULLOUGH: Your Honor, if we could just have one
24 moment. I apologize.

25 THE COURT: Yeah, that's fine.

PLEA HEARING

27

1 (Discussion held off the record between counsel at
2 4:42 p.m.)

3 MR. NISKAR: Just one second, Your Honor. We're
4 making a change.

5 THE COURT: Okay.

6 (Short pause.)

7 MR. LESSING: Your Honor, you have the original copy
8 of the --

9 THE COURT: I believe there it is.

10 MR. LESSING: Great. We're going to need to make a
11 quick change.

12 THE COURT: That's fine.

13 (Short pause.)

14 MR. LESSING: Thank you for your patience, Your Honor.

15 THE COURT: No problem.

16 MS. MCCULLOUGH: Your Honor, with respect to
17 paragraph 7, the parties have amended it to state specifically:
18 In light of the parties' intention to resolve all pertinent
19 pending civil actions including *United States versus Reliance*
20 *Medical Systems* and *United States ex rel. versus -- Savitch*
21 *et al.* --

22 THE COURT: S-A-V-I-T-C-H, right.

23 MS. MCCULLOUGH: Yes. The parties agree that there
24 will not be a separate restitution order as to the Defendant,
25 Dr. Sabit, as part of the resolution of the above referenced

PLEA HEARING

28

1 cases. And the parties agree that the appropriate disposition
2 of the civil cases does not include civil judgments. And all
3 parties initialed, Your Honor.

4 THE COURT: Okay.

5 MR. LESSING: And for the record, Dr. Sabit has signed
6 that paragraph.

7 THE COURT: You've read that and you understand that,
8 Doctor?

9 THE DEFENDANT: I do.

10 THE COURT: Okay. Very good.

11 MS. MCCULLOUGH: Thank you, Your Honor. We appreciate
12 that time.

13 THE COURT: No problem. Then let us proceed to the
14 various counts and to the -- let's go to the first count that
15 relates to, I believe that's Patient Number 1 who underwent
16 spinal surgery around February of 2012, and in the report that
17 you purportedly performed procedures, performed a fusion with
18 instrumentation at the L4-L5 and S1 levels and utilized, you
19 stated, the Zimmer, Z-I-M-M-E-R, transfacet,
20 T-R-A-N-S-F-A-C-E-T, screw system when, in fact, that you did
21 not place that medical device and, nevertheless, caused billing
22 to get \$26,067 for that surgery and submitted the claims.

23 How do you plead as to that count, sir?

24 THE DEFENDANT: Guilty.

25 THE COURT: Okay. Please tell me what it is that you

PLEA HEARING

29

1 did in around February, 2012, that leads you to believe you're
2 guilty of that count.

3 MR. NISKAR: One second, please.

4 (Discussion held off the record between the Defendant and
5 counsel at 4:49 p.m.)

6 THE DEFENDANT: Your Honor, on February 29, 2012, I
7 operated on a patient. In my dictation I stated I --

8 THE COURT: A little louder, a little slower because
9 Ms. Lizza has to take down every word, so slower. Thanks.

10 THE DEFENDANT: In my dictation I stated that I used a
11 Zimmer transfacet screw. I did not use a transfacet screw, and
12 I did not perform a fusion using a Zimmer transfacet screw. I
13 dictated a note stating that I had done the above and submitted
14 that as a bill.

15 THE COURT: And you got paid by Medicare, Medicaid?

16 THE DEFENDANT: That is correct.

17 THE COURT: Any questions you want to -- and this was
18 in what city?

19 THE DEFENDANT: This was in Pontiac, Michigan.

20 THE COURT: Okay. That's the Eastern District of
21 Michigan.

22 Any questions you want to further ask?

23 MS. MCCULLOUGH: Just --

24 THE COURT: -- with regard to Count 1?

25 MS. MCCULLOUGH: Just one, Your Honor.

PLEA HEARING

30

1 THE COURT: Okay.

2 MS. MCCULLOUGH: You knew when you submitted the claim
3 or caused the claim to be submitted that it was false?

4 THE DEFENDANT: That's correct.

5 MS. MCCULLOUGH: Thank you, Your Honor.

6 THE COURT: Let's go to Count 2. You've read these
7 counts, so why don't you just say what it is that you did on or
8 about April, 2012, that leads you to believe you're guilty of
9 health care fraud with regard to Count 2, Doctor.

10 THE DEFENDANT: On April 13th of 2012 I operated on a
11 patient in Sinai-Grace Hospital, which is in Detroit, Michigan.
12 I dictated that I operated at L4-L5 and S1 levels using the
13 Zimmer transfacet screw system. I did not use the Zimmer
14 transfacet screw system, and I did not perform a fusion using
15 the Zimmer transfacet screw system. I billed Medicaid in the
16 amount of \$28,605 and was paid some amount of money for what I
17 had dictated.

18 THE COURT: And you knew that your statements were
19 false?

20 THE DEFENDANT: That's correct, Your Honor.

21 THE COURT: And you made them to receive the money
22 from the government?

23 THE DEFENDANT: That's correct, Your Honor.

24 THE COURT: Any further questions from the government
25 to --

PLEA HEARING

31

1 MS. MCCULLOUGH: No questions, Your Honor.

2 THE COURT: How do you plead as to that?

3 THE DEFENDANT: I plead guilty.

4 THE COURT: Did I go over the thing as to previous
5 count?

6 MR. NISKAR: I don't think you asked him how he plead
7 to Count 1.

8 THE COURT: As to Count 1, going back to that, how do
9 you plead as to Count 1 which dealt with --

10 MR. LESSING: Patient 1, Your Honor.

11 THE COURT: -- Patient 1?

12 THE DEFENDANT: I plead guilty, Your Honor.

13 THE COURT: The Court finds, as to Count 1, the
14 Defendant's statements has met the elements, required elements
15 of the offense, knowingly, freely, voluntarily made, and the
16 Court will accept the plea to Count 1, plea of guilty, and
17 we'll take the Rule 11 under advisement.

18 As to Count 2 which dealt with Patient Number 2, how
19 do you plead as to that?

20 THE DEFENDANT: Guilty, Your Honor.

21 THE COURT: Okay. As to that, the Court finds the
22 Defendant's statements are knowingly, freely and voluntarily
23 made. The elements of the offense to which he pleads guilty
24 has been made out by his statements in court. The Court will
25 accept the plea, take the Rule 11 under advisement.

PLEA HEARING

32

1 Let's go to Count 3. That deals with Patient
2 Number 3. Please tell me what it is that you did on or about
3 March of 2012 with regard to Patient Number 3 that leads you to
4 believe you're guilty of health care fraud.

5 THE DEFENDANT: On March 21, 2012, I operated on this
6 patient in Pontiac, Michigan. Again, I dictated a report
7 stating that I had performed a fusion at the L4-L5 level using
8 the Zimmer transacet screw system when, in fact, I had not
9 done that. I submitted the bill to Blue Cross for \$20,383 and
10 was paid some amount of that and I did this knowing that I was
11 making a false statement.

12 THE COURT: Okay. Any questions the government wants
13 to ask to further establish a factual basis?

14 MS. MCCULLOUGH: The government is satisfied with the
15 factual basis, Your Honor.

16 THE COURT: How do you plead as to Count 3?

17 THE DEFENDANT: Guilty.

18 THE COURT: The Court finds the Defendant's plea as to
19 Count 3 is knowingly, freely, voluntarily made. The elements
20 of the offense to which he pleads guilty have been made out by
21 his statements in court. The Court will accept the plea to
22 Count 3, take the Rule 11 under advisement.

23 Let's go to Count 4 which deals with Patient Number 4.

24 THE DEFENDANT: On March 31, 2012, I operated on a
25 patient in Lapeer, Michigan. I dictated that I had performed

PLEA HEARING

33

1 an instrumented fusion at L4-5 and S1 using the Zimmer
2 transfacet screw system. I had not done this yet I dictated
3 this. I submitted this bill to Medicaid and was, again, paid
4 some amount of what I had billed, and I did this knowing that I
5 had not, in fact, done this above operation.

6 THE COURT: So you had submitted fraudulent statements
7 in the billing to receive the payment, correct, Doctor?

8 THE DEFENDANT: That's correct.

9 THE COURT: Okay. Any questions that the government
10 wishes to further ask with regard to Count 4?

11 MS. MCCULLOUGH: No, Your Honor. Government is
12 satisfied with factual basis.

13 THE COURT: How do you plead, sir, as to Count 4?

14 THE DEFENDANT: I plead guilty.

15 THE COURT: The Court finds Defendant's plea is
16 knowingly, freely, voluntarily made. The elements of the
17 Count 4 have been made out by his statements in court. The
18 Court accepts the plea to Count 4, take the Rule 11 under
19 advisement.

20 Count 5 charges unlawful distribution of a controlled
21 substance. Please -- what is the factual basis for this
22 offense?

23 THE DEFENDANT: On October 22, 2012, I prescribed
24 oxycodone, 30 milligrams, to a patient who did not need the
25 medication. Wrote the prescription out in his name, and he

PLEA HEARING

34

1 presumably filled the prescription.

2 THE COURT: Okay. And you did it for no legitimate
3 medical purpose, the prescription?

4 THE DEFENDANT: That's correct.

5 THE COURT: Okay. And this occurred in what city?

6 THE DEFENDANT: Probably Southfield, Michigan.

7 THE COURT: That's Eastern District of Michigan.

8 And you knew that oxycodone was a controlled narcotic;
9 is that correct?

10 THE DEFENDANT: That's correct.

11 THE COURT: Okay. Any questions the government wants
12 to ask to further establish a factual basis?

13 MS. MCCULLOUGH: No, Your Honor. Government is
14 satisfied with the factual basis.

15 THE COURT: Okay. How do you plead as to Count 5,
16 sir?

17 THE DEFENDANT: Guilty.

18 THE COURT: The Court finds the Defendant's plea is
19 knowingly, freely and voluntarily made. The elements of the
20 offense to which he pleads guilty have been made out by his
21 statements in court. We'll accept the guilty plea, take the
22 Rule 11 under advisement and we'll refer you to the probation
23 department for a presentence report.

24 And, Ms. Tofil, if you help us with a sentencing date,
25 we will conclude this proceeding.

PLEA HEARING

35

1 THE COURT CLERK: September 15th at 1:00 p.m.

2 THE COURT: Okay. Very good.

3 Anything further from the government?

4 MR. BAUM: Your Honor, just to be clear, did the Court
5 discuss the appellate waiver with the Defendant?

6 THE COURT: I did at the initial get-go, yes.

7 MR. BAUM: I apologize, Your Honor.

8 THE COURT: That covers the plea agreement. It's a
9 single plea agreement --

10 MR. BAUM: Thank you.

11 THE COURT: -- both indictments. Informations, sorry.

12 Anything further from the defense?

13 MR. NISKAR: Not on behalf of Dr. Sabit.

14 MR. LESSING: No, Your Honor.

15 THE COURT: Thank you. We are concluded.

16 MS. MCCULLOUGH: Thank you, Your Honor.

17 (Proceedings concluded, 4:57 p.m.)

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PLEA HEARING

36

CERTIFICATION OF REPORTER

I, Leann S. Lizza, do hereby certify that the above-entitled matter was taken before me at the time and place hereinbefore set forth; that the proceedings were duly recorded by me stenographically and reduced to computer transcription; that this is a true, full and correct transcript of my stenographic notes so taken; and that I am not related to, nor of counsel to either party, nor interested in the event of this cause.

S/Leann S. Lizza

6-3-2015

Leann S. Lizza, CSR-3746, RPR, CRR, RMR

Date